



## COLUMBIA HEIGHTS POLICE DEPARTMENT POLICY MANUAL

<b>TITLE: BODY WORN CAMERA (BWC) RECORDING EQUIPMENT AND STORAGE</b>	<b>GENERAL ORDER NUMBER: 1101</b>
<b>REFERENCES:</b>	<b>EFFECTIVE DATE: 08/01/2016</b>
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The purpose of this General Order is to establish uniform guidelines for the operation, and use of Body Worn Camera Equipment and to establish a retention schedule of digital evidence.

### 1101:1 Use of Body Worn Cameras by CHPD staff

The primary purpose of using Body Worn Cameras (BWC's) is to capture evidence arising from police-citizen encounters. This policy reflects a balance between the desire to establish exacting and detailed requirements and the reality that Officers must attend to their primary duties and the safety of all concerned, often in circumstances that are tense, uncertain, and rapidly evolving. This policy also sets forth rules governing access to and retention of BWC data.

It is the policy of this department to authorize and require the use of department issued BWC's as set forth below, and to administer access to BWC data as provided by law.

### 1101:2 Definitions

**1101:21** The following terms have the meaning provided below:

- A. **MGDPA or Data Practices Act** refers to the Minnesota Government Data Practices Act, Minn. Statute 13.01, et seq.
- B. **Records Retention Schedule** refers to the General Retention Schedule for the Columbia Heights Police Department.

- C. **Law Enforcement Related Information** means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- D. **Evidentiary Value** means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.
- E. **General Citizen Contact** means an informal encounter with a citizen that is not and does not become law enforcement –related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- F. **Adversarial** means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal

conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

G. **Unintentionally recorded footage** is a video recording that results from an Officer's inadvertence or neglect in operating the Officer's BWC, provided that no portion of the resulting recording has evidentiary or administrative value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while other Officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

H. **Official Duties**, for purposes of this policy, means that the Officer is on duty and performing authorized law enforcement services on behalf of this agency.

### **1101:3 Installations**

When using a BWC, the BWC should be mounted in such a way as to capture the widest view available.

#### **1101:31 Setup**

The setup of any Mobil Video Recorder shall be performed by those persons authorized and responsible for operation of the equipment.

### **1101:4 Procedures for General Use**

#### **1101.41: Use of BWC's**

Officers may use only department-issued BWC's in the performance of official duties for the Columbia Heights Police Department or when otherwise performing authorized law enforcement services as an employee of this department.

#### **1101:42 Inspection**

Officers who have been issued BWC's shall operate and use them consistent with this policy.

Officers shall inspect the equipment at the beginning of each shift to make sure the devices are functioning properly. Officers noting a malfunction during testing or at any other time shall report the malfunction to the Officer's supervisor and shall document the report in writing by reporting the issue through the IT Help Desk program.

#### **1101:43 Startup**

The BWC shall be turned on at the beginning of each shift, and turned off at the end of the shift. To avoid unintentionally recorded footage, officers may shut the camera off when in a sensitive area (e.g. locker room, rest room, break time, meetings, etc.). The BWC camera should remain on when the officer is in public.

#### **1101:44 Activation of Camera System**

Officers shall activate their BWC's responding to all calls for service and during all law enforcement-related encounters and activities. However, officers need not activate their body-worn cameras when it would be unsafe, impossible or impractical to do so, but such instances of not recording when otherwise required must be documented by the officer via narration on camera, through call notes, or in the officer's report of incident. Officers have discretion to record or not record general citizen contacts. Officers may use their BWC to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.

Officers shall use their BWC's to record their transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use of force incident.

**1101:45 Recording of Incidents**

Once recording begins, officers shall record the incident or encounter, until the incident has been concluded, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. Officers shall state the reasons for ceasing the recording on camera before deactivating their BWC. Officers are not required to cease recording for anyone except at the officer's own discretion, or a supervisor's direction. Officers are also encouraged to provide narration with the video recording preparatory to each stop. The intent of this narration is to assist the officer in necessary written documentation, and to assist in supporting the reason for the stop.

Officers shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.

**1101:46 Proprietary Rights**

Audio/video recordings are the exclusive property of the Columbia Heights Police Department, and shall be governed by policy and law regulating government data.

**1101:47 Media Review**

Officers shall not erase recorded audio/video media. Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

Agency personnel shall document their reason for accessing stored BWC data at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained this agency to public and social media websites.

Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

The BWC system shall be configured in a way as to prevent recording over of a previously recorded portion of the tape or media.

**1101:48 Audio Statements**

The audio system is not meant to replace formal recorded statements. Formal recorded statements shall be conducted with department issued audio recorders.

**1101:5 Prohibited Body Worn Camera Recordings****1101:51 Prohibited Recordings**

To respect the dignity of others, officers should try to avoid recording videos of persons who are nude or when sensitive areas are exposed. The BWC shall not be used to record non-work related personal activity and will not be activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms or restrooms, unless an exigent circumstance exists. The BWC will not be intentionally activated to record conversations of fellow employees without their knowledge during routine, non-enforcement related activities.

**1101:6 Audio/Video Recording Custody and Control****1101:61 Media Storage****1101:61-1 All Media to be Retained.**

Media shall be retained in storage and maintained for no less than ninety (90) days. Media may be kept past ninety (90) days for use in training.

Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal

that is sick, injured, or dangerous, must be maintained for a minimum period of one year.

### **1101:61-2 Evidentiary Media**

Media which is believed to contain either evidence of a crime, or activity which is the subject of a complaint, will be retained until it is no longer needed for investigative or evidentiary purposes.

## **1101:7: Access to BWC Data**

### **1101:71 Duplication of Tapes/Media**

The original media is to remain in the custody of the Columbia Heights Police Department at all times.

#### **1101:71-1 Requests for Media**

Requests for duplication of recorded media from public or private concerns shall be provided in accordance with the data practices policy outlined in General Order 900, Data Practices Plan. The requestor must pay the fee for duplicating the media prior to the copy being made.

Certain file management software, including evidence.com managed by Taser Int., has the capability to share media files electronically. Only Columbia Heights officers authorized to do so, may electronically share media files with other law enforcement agencies, or county departments, as part of an active or potential investigation. Any other request should follow the normal procedure for release of information.

**1101:71-2 Data Subjects:** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:

- Any person or entity whose image or voice is documented in the data (M.S. 13.825, subd. 4(a)).
- The Officer who collected the data (M.S. 13.825, subd. 4(a))

- Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording. (M.S. 13.825, subd. 4(a)).

Privacy: BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

BWC data pertaining to people is presumed private, as is BWC pertaining to businesses or other entities (M.S. 13.825, subd. 2(a)). However, Some BWC data is classified as confidential, and some BWC data is classified as public:

### **1101:71-3 Confidential Data:**

- BWC data that is collected or created as part of an active criminal investigation is confidential while the investigation remains active. (M.S. 13.82, subd. 7.). This classification takes precedence over the “private classification listed above and the “public” data classification listed below. (M.S. 13.825, subd. (2)(a)(3)).

### **1101:71-4 Public Data: The following BWC data is public:**

- Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous. (M.S. 13.82, subd. 2(a)(1)).
- Data that documents the use of force by a peace officer that results in substantial bodily harm. (M.S. 13.82, subd. 2(a)(1)).
- Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover officers must also be redacted. (M.S. 13.825, subd. 2; M.S. 13.82, subd. 17(a)).
- Data that documents the final disposition of a disciplinary action against a public employee. (M.S. 13.825, subd. 2(a)(4); M.S. 13.43, subd. 2(5)).

However, if another provision of the Data Practices Act classifies data as private or otherwise public, the data retains that other classification. (M.S. 13.825, subd. 2(a)(5). For instance, data that reveals protected identities under M.S. 13.82, subd. 17 should not be released even if it would otherwise fit into one of the public categories listed above.

#### **1101:71-5 Records to Maintain:**

The department will maintain the following records and documents relating to BWC use, which are classified as public data (M.S. 13.825, subd. 5):

1. The total number of BWCs owned by the agency;
2. A daily record of the total number of BWCs actually deployed and used by officers and, if applicable, the precincts in which they were used;
3. The total amount of recorded BWC data collected and maintained; and
4. This policy, together with the Records Retention Schedule.

#### **1101:71-6 Access to BWC data by non-employees:**

Officers shall refer members of the media or public seeking access to BWC data to the department Office manager, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- An individual shall be allowed to review recorded BWC data about that person and other data subjects in the recording (M.S. 13.825, subd. 4(b)), except when:
  - The data was collected or created, and is being maintained as part of an ongoing investigation (M.S. 13.82, subd. 7; and
  - Access shall not be granted to portions of the data that the agency would otherwise be prohibited by law from disclosing

to the person seeking access, such as the identities of informants, certain witnesses, juvenile offenders, and victims of criminal sexual conduct or sex trafficking. (M.S. 13.82, subd. 17).

An individual data subject shall be provided with a copy of the recording upon request but subject to the following guidelines on redaction before the copy is provided (M.S. 13.825, subd. 4(b)):

- Data on other individuals in the recording who do not consent to the release must be redacted.
- Data that would identify undercover officers must be redacted. Data on other Officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

#### **1101:71-7 Access by Police Officers and Law Enforcement Employees:**

No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes. In addition, Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

Agency personnel shall document their reason for accessing stored BWC data at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.

Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

**1101:71-8 Other Authorized Disclosures of Data:**

Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. 13.82 subd. 15, as may be amended from time to time. Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying the video. In addition:

- BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes and are documented in writing at the time of the disclosure.
- BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

**1101:8 Data Security Safeguards****1101:81**

Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view BWC data.

As required by M.S. 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program. The Office Manager shall be responsible for scheduling the biennial audit.

**1101:9 Agency Use Data**

**1101:91** At least once a month, supervisors will randomly review BWC recordings made by each officer to ensure the equipment is operating properly and officers are using the devices appropriately in accordance with this General

Order (MS 626.8432, SUBD. 3(B)(8)), and to identify and performance areas in which additional training or guidance is provided.

In addition, supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about Officer misconduct or performance.

Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.

Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case by case basis. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainee's performance.

**1101:92 Recorded Media Copies**

Any time a recorded media is to be duplicated, it shall be done by the Columbia Heights Police Department while maintaining a secure chain of custody.

**1101:10 Data Retention:**

**1101:10-1** All BWC data shall be retained for a minimum period of 90 days. (M.S. 13.825, subd 3)

Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or killing of an animal that is sick, injured or dangerous, must be maintained for a minimum of one year. (13.825, subd, 3(b)(1)(i).

Certain kinds of BWC data must be retained for six years:

- Data that documents the use of force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review. (M.S. 13.825, subd. 3(b)(1)(ii); Gen. Records Ret'n Sched. For Minn. Cities, Code POL 05920

- Data documenting circumstances that have given rise to a formal complaint against an Officer (M.S. 13.825, subd. 3(b)(2); Gen. Records Ret'n Schedule for Minn. Cities, Code POL 05880.
- Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.
- Subject to the information below, all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training, shall be destroyed after 90 days.
  - Upon written request by a BWC data subject, the agency shall retain a recording pertaining to the subject for an additional period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is made.
- The department shall maintain an inventory of BWC recordings having evidentiary value.

- The Police Department will post information on its website concerning retention periods for BWC video data.

#### **1101:11 Compliance**

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to M.S. 13.09.\_\_\_\_ (M.S. 626.8473, subd. (b)(8)).

#### **1101:12 Responsibility**

It is the responsibility of all Columbia Heights Police Department employees to follow the procedures in this General Order.

#### **BY ORDER OF:**

Scott Nadeau, Chief of Police

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